

## **EXHIBIT 2**

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x  
4 CARLOS FLORES, LAWRENCE BARTLEY,  
5 EDGARDO LEBRON, ANTONIO ROMAN,  
6 DEMETRIUS BENNETT, L'MANI DELIMA,  
DONTAE QUINONES, and SHAROD  
LOGAN, on behalf of themselves and all  
Others similarly situated,

9 TINA M. STANFORD, as Chairwoman of  
10 the New York State Board of Parole;  
11 and WALTER W. SMITH, as Commissioner  
12 of the New York State Board of Parole;  
13 JOSEPH P. CRANGLE, as Commissioner of  
14 the New York State of Parole; ELLEN  
15 E. ALEXANDER, as Commissioner of the  
16 New York State Board of Parole; MARC  
17 COPPOLA, as Commissioner of the New  
18 York Board of Parole; TANA AGOSTINI,  
19 as Commissioner of the New York State  
20 Board of Parole; CHARLES DAVIS, as  
21 Commissioner of the New York State  
22 Board of Parole; ERIK BERLINER, as  
23 Commissioner of the New York State  
24 Board of Parole; OTIS CRUSE, as  
25 Commissioner of the New York State  
Board of Parole; TYECE DRAKE, as  
Commissioner of the New York State  
Board of Parole; CARYNE DEMOSTHENES, as  
Commissioner of the New York State  
Board of Parole; MICHAEL CORLEY, as  
Commissioner of the New York State  
Board of Parole; CHANWOO LEE, as  
Commissioner of the New York State  
Board of Parole; SHEILA SAMUELS, as  
Commissioner of the New York State  
Board of Parole; ELSIE SEGARRA, as  
Commissioner of the New York State  
Board of Parole; and CARLTON  
MITCHELL, as Commissioner of the New  
York State Board of Parole,  
Defendants

Page 2

1 (continued from page 1)

2

3                   VIDEOTAPE DEPOSITION OF

4

ELLEN ALEXANDER

5

VIA ZOOM VIDEOCONFERENCE

6

October 15, 2021

7

9:00 a.m.

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9                   \* \* \*

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11                   Remote videotape deposition of  
12 Ellen Alexander, held virtually via  
13 Zoom Teleconference, hosted from  
14 Veritext Legal Solutions, pursuant to  
15 notice, before Maureen Ratto, Certified  
16 Court Reporter, License No. XI01165,  
17 Registered Professional Reporter,  
18 License No. 817125, and Notary Public.

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# ELLEN ALEXANDER

2 laws, regulations and case law and I use  
3 my understanding of that to try and  
4 define those terms but, you know, these  
5 terms are terms of art. I know they  
6 possibly are used in other statutes  
7 around the country. I can't cite them but  
8 these are terms of art. Some of them are  
9 difficult to define. So I could tell you  
10 that I think there is discretion built  
11 into the system, a tremendous amount of  
12 discretion built into the system.

13                   Q.        Okay. Now, you mention that  
14                   when you look at the factors and you were  
15                   looking at -- when you say "factors", are  
16                   you referring to I through 8, little i(c)  
17                   -- little i through 8, are those the  
18                   factors that you are referencing?

19                   A.        Yes. They're easier to read in  
20                   the regulation and the statute but  
21                   they're pretty much the same.

22                   Q.        Okay.  Are you required to give  
23       any particular weight to any one of those  
24       eight factors?

25 A. No, we are not.

1                          ELLEN ALEXANDER

2                 Q.      Are there any factors beyond  
3                 this list that you understand you are  
4                 required by law to consider?

5                 A.      Well, certainly the class that  
6                 we look at now, I am required to look at  
7                 other factors for those individuals.

8                 Q.      When you say "the class", are  
9                 you talking about the juvenile lifers?

10                A.      Yes. Yes.

11                Q.      So for that cohort for  
12                juvenile lifers there are additional  
13                factors that you are required to  
14                consider?

15                A.      Yes. Yes.

16                Q.      What are those factors?

17                A.      Well, the factors are listed  
18                in 8002.2(c), the guiding principles, and  
19                I would look at those.

20                Q.      Okay. Do you have discretion  
21                to weigh those factors -- give those  
22                factors any weight you so choose?

23                A.      I believe, yes. I certainly  
24                have to consider them, but the statute  
25                didn't tell me how much weight to give

1                          ELLEN ALEXANDER

2                          them but I have to consider them, I  
3                          believe.

4                          Q.      Okay. So for clarity of the  
5                          record, let's mark 8002.2, tab 3, please  
6                          and we can put it on the screen for just  
7                          a minute so we know we're talking about  
8                          the same thing.

9                          (Alexander Exhibit 2, copy of  
10                         8002.2 Parole Release  
11                         Decisionmaking was received and  
12                         marked on this date for  
13                         identification.)

14                         Q.      This should be in your marked  
15                         exhibits folder and I think you have in  
16                         front of you anyway; is that right, Ms.  
17                         Alexander?

18                         A.      That is correct.

19                         Q.      Okay. So when we talk about  
20                         the additional factors you must consider  
21                         for juvenile lifers, is that (c) here  
22                         where it says Minor Offenders, are those  
23                         the factors that you must take into  
24                         account?

25                         A.      Yes. I mean, they are called

1                   ELLEN ALEXANDER

2    -- in the text they're called guiding  
3    principles, but I believe because it  
4    references back to the Executive Law that  
5    I must consider them, I must consider the  
6    diminished capacity and culpability and I  
7    must really look at the growth and  
8    maturity since that time.

9                   Q.    Okay. And can those -- those  
10   things are essentially treated the same  
11   as the other factors that we just looked  
12   at, right?

13                  A.    In my mind, yes.

14                  Q.    So you can give no weight to,  
15   for example, the diminished culpability  
16   of youth; is that right?

17                  A.    No. I wouldn't say no weight.  
18   I have to give it some weight but it's in  
19   my discretion to determine what weight.

20                  Q.    Okay. Is it within your  
21   discretion to accord no weight to any of  
22   the factors?

23                  A.    In my mind, personally, that  
24   is not an option for me.

25                  Q.    So all the factors get some

1                          ELLEN ALEXANDER

2          could make you question whether the  
3          person has been rehabilitated.

4          Q.      What type of knowledge?

5          A.      Well, if it's a family member  
6          or they have reached out while they have  
7          been in prison or have participated in  
8          something that, you know, is  
9          extraordinary that would leave the victim  
10         with discreet knowledge that  
11         rehabilitation is not complete.

12         Q.      So they would have to have  
13         more contemporaneous knowledge, not about  
14         the crime -- you're referring to  
15         contemporaneous knowledge about the  
16         offender?

17         A.      I would say that's --

18         Q.      Okay.

19         A.      -- much more factual and  
20         necessary. But if something happened  
21         nine years ago and the person is up for  
22         the minimum on a nine to life sentence,  
23         that victim may have information which  
24         may be more time relevant. I don't know.  
25         I'm just talking in generalities. I am

1                          ELLEN ALEXANDER

2                          not talking about specifics.

3                          Q.      Okay. May you under the  
4                          statute deny release to a juvenile lifer  
5                          even if that person demonstrates maturity  
6                          and rehabilitation subsequent to their  
7                          crime?

8                          A.      I believe I have the ability  
9                          to do that, yes.

10                        Q.      And have you done that? It's  
11                        okay.

12                        A.      I don't know. I don't -- I  
13                        don't know.

14                        Q.      Is it ever appropriate to deny  
15                        parole based the seriousness of the crime  
16                        alone?

17                        A.      I don't think so.

18                        Q.      Is the standard -- I know the  
19                        standard has to undermine respect for the  
20                        law. But in your understanding of the  
21                        standard would it essentially be the same  
22                        if it said release would deprecate the  
23                        seriousness of the crime? Functionally,  
24                        are those the same things?

25                        A.      It can be functionally the

1                   ELLEN ALEXANDER

2        same thing. I think as a society we want  
3        to strive that people respect our laws,  
4        because I think it's an important  
5        societal norm. So I think those phrases  
6        should be linked. I'm not sure I answered  
7        that as crisply as I should have.

8                   Q.        I'm trying to figure out what  
9        work respect for the law is doing, given  
10       that we have no surveys or any  
11       information about broadly public -- to  
12       inform us about whether release would  
13       undermine respect for the law. So what  
14       work is that doing in this -- in this  
15       standard? Is it essentially just for  
16       extra verbiage? Is it the same thing as  
17       deprecate the seriousness of the crime?

18                   MR. HARBEN:   Object to form.

19                   A.        I think seriousness -- I read  
20        it more holistically, that I want people  
21        to have respect for our laws and I think  
22        the more serious the crime is and more  
23        heinous the crime is, if it's not  
24        recognized in some way, I think it does  
25        undermine our societal fabric. So I think

1                   ELLEN ALEXANDER

2    sensitive to but I didn't have the  
3    regulations or some of the knowledge I  
4    have now to back it up.

5                   Even from my earliest cases,  
6    you know, I dealt with people who were,  
7    let's say 40-years-old and committed a  
8    crime when they were 17 or 18, and they  
9    grew up in prison and I tended to look at  
10   what happened there. But has my practice  
11   evolved since 2012? Absolutely.

12                  Q.    Okay. Who is this mentor you  
13    referenced?

14                  A.    Christina Hernandez.

15                  Q.    What did it mean to you when  
16    she said someone grew up in prison? How  
17    is that relevant to your analysis?

18                  A.    I think it was code for me to  
19    start exploring their growth and maturity  
20    and what had changed for them in prison.  
21    I mean, it wasn't as clear as the  
22    diminished culpability of youth or  
23    measuring the growth and maturity, but it  
24    was delving a principle that I held dear  
25    to my questioning and decisionmaking.

1                   ELLEN ALEXANDER

2                   Q.        Okay. Do you know whether the  
3        U.S. Constitution imposes any obligations  
4        on you with respect to parole decisions  
5        for juvenile lifers?

6                   MR. HARBEN: Objection, calls  
7        for a legal conclusion.

8                   A.        I have a general sense that  
9        there have been U.S. Supreme Court cases.  
10      I understand that someone should not be  
11      given a life sentence without the  
12      opportunity for parole as a minor. I  
13      think there has maybe been some cutback  
14      with that on the conservative court but I  
15      have used my principles not really on  
16      what the U.S. Supreme Court has said but  
17      what has been codified in regulation here  
18      as determined by Hawkins.

19                  Q.        Okay. So are you familiar with  
20      the legal case Graham V Florida?

21                  A.        I know the name. I'm not  
22      intimately familiar with it. It's been  
23      many many years since I've read it.

24                  Q.        Okay. What about Miller versus  
25      Alabama?

1                          ELLEN ALEXANDER

2                  A.      Same answer. I remember the  
3                  name but I don't know the exact holdings.

4                  Q.      Okay. And what about  
5                  Montgomery versus Louisiana?

6                  A.      That would be the same answer.

7                  Q.      Okay. Do you recall receiving  
8                  any training or guidance on  
9                  constitutional standards when you were  
10                appointed to the board?

11                A.      Constitutional in terms of all  
12                releases?

13                Q.      No. In terms of juvenile  
14                lifers.

15                A.      When I was appointed?

16                Q.      Yeah.

17                A.      No, I don't recall that.

18                Q.      Okay. Did you ever?

19                A.      We had training after Hawkins  
20                came down.

21                Q.      Okay. How did you come to  
22                learn that the Hawkins decision had come  
23                down?

24                A.      I believe legal counsel  
25                advised us.

# ELLEN ALEXANDER

Q. Okay. What is your understanding of what Hawkins requires of you as a commissioner?

A. It requires us to examine the person at the time they were an offender when they were young, to go through their family and work and school history and whether they were influenced by people who were older; did they have an intact family? Were they subject to other sorts of pressures of being a follower and having a lack of structure? And then, more importantly in my mind, is to measure that's used to see whether they can appreciate the risk perhaps or why the crime took place? But to me it's always the flip side which needs to be explored; since that time have they developed the growth and maturity to not be that person they were at 16 or 15; do they appreciate the risk; do they appreciate the harm?

Q. So the inquiry into family and work and school is intended to assess

1                   ELLEN ALEXANDER

2       follow the rules. That's a mature  
3       teenager.

4       Q.        Okay.

5       A.        They still may not appreciate  
6       all the risks or be able to fully assess  
7       it because their brain hasn't fully  
8       assessed, but they're clearly more mature  
9       than someone who has not taken care of  
10      their parents or they're individuals who  
11      are roaming the streets. So there is a  
12      distinction there for me to form a  
13      starting ground.

14      Q.        I understand how this is  
15      relevant to your evaluation of current  
16      maturity in rehabilitation from the  
17      starting point. But are you -- are you  
18      saying that when you evaluate a teenager  
19      who committed a crime and at the time of  
20      the crime they were doing things like  
21      taking care of younger siblings and  
22      exhibiting responsibility, that that  
23      person, because they were able to be  
24      responsible to take care of their younger  
25      sibling, is also more culpable for their

1                   ELLEN ALEXANDER

2                   crime because they're more mature than  
3                   someone who is the same age but not  
4                   exhibiting those responsible  
5                   characteristics?

6                   A.        I would say as a general  
7                   principle, maybe yes. It's sort of like  
8                   your earlier question about the  
9                   difference between a 13-year-old and a  
10                  17-year-old. I'm just trying to gauge  
11                  where they were.

12                  Q.        Okay. How did you come to the  
13                  understanding that Hawkins requires you  
14                  to make these inquiries into family, work  
15                  and school life?

16                  A.        Memo from legal counsel and  
17                  training.

18                  Q.        Do you try to follow the  
19                  advice of counsel?

20                  A.        I do.

21                  Q.        Do you follow the advice of  
22                  counsel in drafting parole decisions,  
23                  denials and grants?

24                  MR. HARBEN: Object to form.

25                  A.        I don't exactly know what you

# ELLEN ALEXANDER

mean. I'm sorry.

Q. Do you follow -- has counsel ever given you advice on how to draft a parole decision to comply with the law?

MR. HARBEN: Object to form.

A. I've had discussions with legal counsel because I have a background as being an inhouse counsel. So I may have a higher level of respect of the role that they play in the organization and I enjoy talking to them and trying to do a better job.

I'm not sure I'm answering  
your question.

Q. I'm asking, do you generally follow the advice of counsel?

A. I do. I do.

Q. Okay.

A. But obviously I come to this job with my own sense of self and worth and I try and weave everything together.

Q. We looked at earlier a provision of the statutory law that requires you to render your decisions in

1                   ELLEN ALEXANDER

2                   MR. HARBEN: Object to form.

3                   A. First of all, I need to accept  
4 the verdict as a Parole Commissioner.

5                   Q. Okay. Can you accept a verdict  
6 and also accept that the person might not  
7 have any recollection of ever having  
8 committed the crime?

9                   A. Both can be true, yes.

10                  Q. Okay. Right. So if they don't  
11 ever recollect committing the crime, it  
12 would hard to provide insight into a  
13 crime that they don't ever remember  
14 having committed, right?

15                  A. I think that's a logical  
16 truism, yes.

17                  Q. Okay. Well, Mr. Pedersen died  
18 in custody so you won't have to address  
19 him.

20                  All right. I'd like to go to  
21 talk a little bit about your application  
22 of risks and needs and COMPAS.

23                  Kathryn can you pull up tab 7,  
24 please?

25                  (Alexander Exhibit 8,

1                   ELLEN ALEXANDER

2                   flowchart of Parole Board process  
3                   was received and marked on this  
4                   date for identification.)

5                   Q.        While we're waiting for that,  
6                   Commissioner Alexander, do you have --  
7                   were you ever provided a manual for  
8                   essentially how to conduct your job?

9                   A.        A manual? I don't believe so.  
10                  I mean, we did have extensive training  
11                  when I first joined the board.  
12                  Commissioner Sharkey, Commissioner  
13                  Coppola and I, you know, had training  
14                  with Mr. Tracey, who was the board  
15                  counsel. We talked to other  
16                  commissioners.

17                  I don't remember the material  
18                  that we had and I'm actually moving out  
19                  of my house and have gotten rid of all  
20                  that material. So I don't know what I  
21                  reviewed.

22                  Q.        Okay. Do you have a binder  
23                  potentially called a Commissioner Binder  
24                  that contains instructive information for  
25                  you?

# ELLEN ALEXANDER

A. We have a binder that was provided to us by counsel. That wasn't when I started. That was a more recent initiative, I guess.

Q. Okay. Do you recall the year that you were provided that binder?

A. I don't. I know it was when new commissioners came on, so it would either be 2017 or 2019, but I don't recall which date that happened. I have always -- I've always done my own research and kept statutes and regulations with me so I can refer to them and memos from attorneys without anybody providing me with anything.

Q. Okay. I'd like to turn to page ending 5688 of this binder. Sorry. This is some tabs from a Commissioner Binder.

Do these look familiar to you?  
I know the pages are all redacted but  
does this look familiar to you, this  
flowchart?

A. It doesn't ring a bell with me, but I wouldn't deny that I have seen

Page 322

1                   C E R T I F I C A T E  
2                   I, MAUREEN M. RATTO, a  
3                   Registered Professional Reporter, do  
4                   hereby certify that prior to the  
5                   commencement of the examination, ELLEN  
6                   ALEXANDER was sworn by me to testify  
7                   the truth, the whole truth and nothing  
8                   but the truth.

9                   I DO FURTHER CERTIFY that the  
10                  foregoing is a true and accurate  
11                  transcript of the proceedings as taken  
12                  stenographically by and before me at  
13                  the time, place and on the date  
14                  hereinbefore set forth.

15                  I DO FURTHER CERTIFY that I am  
16                  neither a relative nor employee nor  
17                  attorney nor counsel of any of the  
18                  parties to this action, and that I am  
19                  neither a relative nor employee of such  
20                  attorney or counsel, and that I am not  
21                  financially interested in this action.

22

23



24

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MAUREEN M. RATTO, RPR

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